12

1921.

C. F. 66(a)

Department of the Board of Revenue Land Revenue

OFFICE } Chepauk
STATION }

Mis No. 172

A 760/21.

Dated 11-2-1921

To whom sent		Date	Initial.
	Given for copying		
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	Signed		
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(SUBJECT.)

Suits (South Kanara) Udipi Dt Munsiff
O.S. No. 893/20 - Mudanidambur -
Warg claim to land - Defence Sanctioned

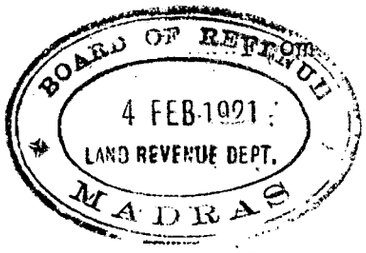
* Not to be filled in the case of permanent records.

R 17. mangalore

Ref. on 1788-20-V.3.

South Kanara Collector's Office,
Camp Ajekar, 29th January 1921.

A 760



From

R. H. Ellis, Esquire, I.C.S.,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue. Madras.

Sir,

Suit - 893/20 - Udipi District Munsiff's Court.

One Giriya Shetty and another have filed the above suit against Government for a declaration that the properties S.Nos. 90 & 91 / 2.4 & 7 of Mudanidambur village belong to them on proprietary right and for other consequential reliefs - vide copy of plaint enclosed.

Plaint para 13 p 6 cl

2. The Plaintiffs base their warg claim on the azmaish chitta dated 13th October 1244 (Fasli). This chitta appears to have been prepared to ascertain the produce of the several holdings comprised within it, but it does not give their boundaries and only describes them roughly. The Tahsildar reports that this description is quite insufficient to identify them (copy of the report is enclosed).

DESPATCHED 1 FEB. 1921

Plaint para 7 p 5 cl

p 10 cl

3. Further, the plaint plots which, according to the Plaintiffs are comprised within the chitta, are stated there to measure about 35 koilus which come to about 3½ acres. They, however, actually measure 9 acres and 12 cents.

4. In this connection it may also be mentioned that the present 2nd Plaintiff had once before in 1914 advanced warg claim to most of the plots now claimed. It was, however, ---

rejected by the then Collector on 11th August 1914. The --- present suit having been filed in November 1920 i.e. more --- than six years after the title was denied, is, therefore, --- clearly barred by Limitation. Also in September 1914 the --- 1st Plaintiff had agreed to surrender 91/7A (one of the plaint plots) to Government whenever required, if the enclosure put up by him round it was allowed to stand. The encroachment - was, however, considered objectionable and a penalty was ---- levied from him on 26th July 1915 and the encroachment was -- also removed in September after an eviction order was issued. The claim to this plot is, therefore, also barred under the Land Encroachment Act - vide 30 M.L.J. 255.

5. The Government Pleader, Mangalore whom I have ----- consulted is of opinion that Government has a good case and - that the suit is long time-barred. I agree with him and --- request that the defence of the suit may be sanctioned.

6. The written statement prepared by the Vakil usually employed on behalf of Government at Udipi and slightly altered by the Government Pleader, Mangalore is enclosed for the ---- Board's approval together with the statement prescribed in -- B.S.O. No. 93.

For Collector.

In the Court of the District Munsiff of Udipi

O.S. No.893/1920.

Giriya Shetty and Others Pltffs.

and

The Secretary of State for
India in Council represented
by the District Collector,
Mangalore. Defendant.

Plaint under section 26 Order 7, Rule I of Act V of 1908.

Plaintiffs beg to state as follows:--

1. Giriya Shetty, nephew of Soma Shetty,
2. Ummakke Shedthi niece of Sama Shetty
Nadavars, ryots, residing in Mudanidambur village, Udipi Taluk. Plaintiffs

N. B. The above is Plaintiff's address for processes in this suit.

II Defendant

The Secretary of State for India in Council, represented by the District Collector, South Kanara, Mangalore. Defendant.

III Subject matter of this suit.

1. Plaintiffs are the ejamans of Aliyasantana divided -- family known as Pulimar family of Mudanidambur of which the Patta stands in the name of the 1st Plaintiff. 1st Plaintiff is the ejaman of his branch and 2nd Plaintiff is the ejamanthy of her branch. Both represent their respective branches --- in all dealings and are in law entitled to sue for the -- benefit of their family.

2. Plaint property fully described here-below belonged and belongs to the family of Plaintiffs and has been in the undisputed enjoyment of the family from time immemorial -- as separate warg property. It was divided with other ---

family properties even at the time of the family partition in 1894.

3. As usual in South Kanara, plots depending solely on rainfall for cultivation ~~in~~ i.e. Banabettus, were rendered unfit for cultivation on account of the diminished rainfall -- during recent years and lower lands have been brought under cultivation. Hence many old cultivated Banabettus (i.e. -- plots depending solely ~~upon~~ upon sky for cultivation) have been allowed to lie uncultivated and become used as ~~(lachlee)~~ lachlu --- for the purpose of securing fodder and grass to the owners.

4. Major portion of plaint plots was once cultivated -- plots now rendered unfit for cultivation. Even to-day ---- they appear to have once formed cultivated fields S.F.91/1 and 91/2 have even two old wells and a jack tree thereon. S. F. No.90 is mostly gujje plot i.e. plot enabling ------ yearly supply of manure leaves for warg No.29 of Mudanidambur. Plaint plots were portions of the same warg even according to revenue papers and records.

5. During the last settlement owing to oversight, ---- Government did not issue patta for many warg plots which ---- were either uncultivated or which ~~contained~~ contained only forest ----- growth or manure shrubs. Probably the Revenue chittas were -- not considered at the time of issue of patta. In the present case out of one revenue holding as represented in the chitta -- for warg No.29, patta was issued only for the portion containing tenants house and cultivated land then but for the rest --- patta was not issued. Even though the mistake was brought to the notice of the revenue authorities, the mistake has not been rectified. ✓

6. The plots have been enjoyed exclusively by the Plaintiffs and their family from time immemorial and old mud walls indicat

ing exclusive enjoyment are even now existing. They were not even raised by permission of Government as is the case in --- Government kumaki lands.

7. The Aimashi chitta of Mudanidambur Mouza for Muli warg No.29 in the name of Muligar Pulimar Putta dated 13.10.1244 fasli specifically states that 3 ~~banjree~~ banjru (lying uncultivated) plots and a Gujje plot of about 25 ~~koilees~~ koilus were included in the warg. The plots now claimed are those described fully in the chitta as (a) 5 Vadeis and 5 koilus Didda near Hale Hadi.---- (b) 2 Vadeis or 5 koilus to the east of walawarg in warg No.13. (c) Gujje of about 25 koilus. The portion for which patta has been issued i.e. S. F. 91/6.5.8 is shown in the chitta --- as the house site of Sherif Adam Sahib.

8. Plaintiffs now learn that Government is about to deal with plaint properties as purely Government waste and ~~disposing~~ dispose of it ignoring the just rights of Pliantiffs and their family even though in some revenue enquiry also before settlement -- these plots were stated as being kumaki of Soma Shetty, -- uncle of Plaintiffs and the previous ejaman Government has no sort of right to deal with plaint warg plots in the undisputed long standing enjoyment of Plaintiffs to the prejudice of Plaintiffs and their warg rights and Plaintiffs are therefore entitled and constrained to launch this suit to obtain a permanent injunction restraining Government from dealing with --- plaint plots to the prejudice of Plaintiffs and their warg rights and to get a declaration to the effect that Plaint plots are warg properties belonging to warg No. 29 of Plaintiffs.

9. Registered notice required by law has been duly sent on behalf of Plaintiffs and recorded by the Collector on --- 5th October 1920.

10. As the Government has not admitted the proprietary --

rights of Plaintiffs, Plaintiffs are constrained to launch - this suit for declaration of warg and proprietary rights ----- and for injunction.

11. Cause of action for this suit arose at Mudanidambur village on 5th Octr. 1920 when the suit notice was recorded by the Collector

12. Value of this suit for jurisdiction is Rs 48-10-3 - and court fee of Rs.10-6-0 is paid for declaration and injunction.

13. Reliefs claimed:-

1. Declaration that the plaint property is the warg property of Plaintiff -- belonging to the proprietary rights of Plaintiffs family valued at 5 times the assessment	Rs.43-7-0
2. Restraining Defendant by means of a permanent injunction from --- interfering with the peaceful enjoyment of the plaint properties by -- Plaintiffs and also restraining --- Government from dealing with plaint -- property as being merely assessed waste.	5-0-0
3. Granting costs of this suit, --- further interest, cost of registered notice and other reliefs.	0-3-3
Total	48-10-3

Plaintiffs pray for a decree against Defendant granting them the above reliefs from Defendant dated 1st Novr. 1920

Plaint property.

Property lying in Mudanidambur village, Udipi Taluk, --- within the registration Sub District of Udipi, South Kanara and being a portion of warg No.29 with two wells and a jack tree.

S.F		A.	C.	Rs.	A	P
90	Punja	4	98	5	0	0
91/7	-do-	2	0	2	0	0
91/4 A	-do-	0	48	0	8	0

S. F.		A. C.	Rs.	A	P.
91/2	Punja	1 19	1	3	0
		8 65	8	11	0

List of documents filed on behalf of Plaintiffs.

(1) 13. 10. 1244 fasli Ajmashi chitta No.29 of Mudanidambur Mouza.

(2) 8. 9. 20)
)
(3) 5 10. 20) Letters by the Collector.

(4) 16. 7. 20 Acknowledgment.

(Note) Document No. 1 is to be summoned from Defendant.

Sd/ B. Bhujanga Rao.

/True copy/

1.—2

For Collector.

A 76/21

Suits (S. Kanara) Udipi Dt. Munsiff - O.S. No 893/.- Mudanidambur
Waiq claim W Land -
Res. Nos 17.2 / 11.2.21

The Board sanctions the defence of the Suit And Approves the draft W.S. ~~Subject to the following modification:-~~ ~~Add the following at the end of Second Sentence of para 4.~~ ~~"who has no party thereto"~~

To The Collector of S. Kanara

12.2.21

12/2/21

11.2.21

8

In the Court of the District Munsif of Udipi.

O.S.No. 893/1920.

Between

Giriva Shetty and another. Plaintiffs.

and

The Right Honourable the Secretary of State for India in Council represented by the Collector of South Kanara. Defendant.

Written statement of the Defendant under Order VIII, Rule I of Civil Procedure Code.

The Defendant abovenamed begs to state as follows:-

1. That the address of the Defendant is as stated in the plaint.

2. That Plaintiffs' suit is speculative, frivolous and is not maintainable at law and on merits.

3. This Defendant denies that the plaint properties or any portion thereof ever belonged to the Plaintiffs or to their family and that they belong to them now.

4. This Defendant again denies that the plaint properties are warg properties and that they are included within the boundaries contained in the chitta mentioned in the plaint. The private documents relied upon by the Plaintiffs are not binding upon the Defendant.

5. This Defendant again emphatically denies that the plaint properties or any portion thereof are in the possession and enjoyment of the Plaintiffs or that they ever were in the enjoyment or possession of the Plaintiffs or their family or predecessors-in-title.

6. The plaint lands have all along been Government waste lands and were rightly classified and treated as such at the time of the survey and settlement. The Government is fully entitled to deal with the plaint lands as they like.

7. That Plaintiffs are estopped from advancing their

warg claims, if any, to the plaint plots by their conduct.

8. That Plaintiffs' suit is clearly barred by limitation. The date for the cause of action alleged by the ----- Plaintiffs is not correct.

9. That Plaintiffs have no cause of action for this -- suit under the circumstances alleged in the plaint. Plaintiffs are not entitled to the permanent injunction and the -- declarations and other reliefs claimed.

10. That the suit is bad for misjoinder of Plaintiffs and causes of action.

11. Plaintiffs' claim for a portion of the plaint lands viz. of S.No.91/7 was rightly rejected by the Revenue authorities in E.C.No.153/1324 (Fasli) and Plaintiffs are now ---- estopped from advancing their claim to that land in any event; their claim thereto is barred by the law of limitation.

12. That this Defendant emphatically denies the truth - of the other allegations contained in the plaint not expressly traversed herein in so far as they are against him and puts - Plaintiffs to strict proof of the same.

13. That Plaintiffs are not entitled to recover any of the plaint reliefs from the Defendants.

14. This Defendant, in conclusion, denies Plaintiffs' - suit in toto and prays that the same may be dismissed with -- costs.

1-2-21

For Collector.

31.1.21

Copy of report Dis.No.804 D/Rev.20, dated 1st September 1920 from M.R.Ry. R. Shiva Rao, Tahsildar of Udipi Taluk, to the Collector of South Kanara.

I beg to submit herewith the report called for on the suit notice filed by vakil Mr. Bhujanga Rao on behalf of ----- Giriya Shetty and Ummakke Shedthi received with your endorsement N.Ref. on P.R.No.2059/Rev.20, dated 21st July 1920.

2. I inspected the plots concerned in company with the Mudanidambur Potail who is a member of the family to which the suit notice petitioners belong. In the suit notice, the ---- petitioners claim S.Nos. 91/1, 2, 3, 4A, 7, 92/1 and 90 of ---- Mudanidambur as forming part of their warg No.29 of ---------- Mudanidambur and they rely on Azmaish chitta dated 13-10-1244 (fasli). In the statement given before the Revenue Inspector, they have waived their claim to S.No. 91/1, 3 and 92/1.

3. The chitta referred to by them appears to have been prepared to ascertain the 'huttavalli' (produce) of the several holdings comprised within it and it does not give the -------- boundaries of any of the holdings. It does not enable one to identify the several holdings therein mentioned with the sub divisions now claimed. Their description is insufficient and it cannot be made out where they are.

4. The following description given in the chitta, the petitioners say, comprises within it, the sub divisions now claimed:-

(1) ಕಳ್ಳೇ ಕಾಡಿ ಬಳ್ಳಿಯ ವಡಿಗ್ಗ ದಿಡ್ಡ ಎಂದರ ಸರಾ ಸುಮಾರು ಕೈಲು ಗ್ಗ.

i.e., 5 vadis (paddy flats) and one 'diddu' (raised ground) of an extent of about five 'koilus' adjoining the 'Halehadi

(2) ಲಾಗಲು ವಸಕ್ಕಿದ ಒಂಕ್ಲಾ ಬೆಟ್ಟು ನದ್ದಿ ಮುಡಲು ವಡಿ ೨ರ ಕೈಲು

i.e., two vadis' of an extent of five 'koilus' lying to the -

east ofBanabettu field of 'Uruwarg'

(3) ಗುಜ್ಜಿ ಪೈಕಿಗೆ ಸು.ಸ.ಸು ಕೆಲವು ಎತ್ತಿ ಮತ್ತು ಆದಂ ಶರೀಫ್‌ನವರ ಉರುವ ಮನೆ ಅಡಿ ಪೈಕಿಗೆ ನಾಲ್ಕು Gujji land of an extent of about 25 'koilus' and the house site of Adam Sheriff.

5. The petitioners want us to believe that the ------- 'Halehadi' referred to in item No.1 is identical with S.No. 92/5, 10A and the 5 vadis' and the 'Diddu' are identical with S.No. 91/4A, 6, 7 (of which S.No. 91/6 is already in their patta) and the northern portion of S.No. 90 respectively. There are no traces of hadi in the vicinity and I find there is no ---- 'Diddu' in the morthern portion of S.No. 90. The extent of - the five 'vadis' and the 'Diddu' as per chitta is five ------ 'koilus' i.e , 50 cents, each 'koilu being equal to 10 cents; but the extent of S.Nos. 91/4A, 6, 7 alone comes to 2.95 acres without taking into account any portion of S.No. 90. As ---- regards the second item, it cannot be made out where the ---- 'ಉರುವಮನೆ' is. The petitioners however contend that their land S.No. 74/25 appertains to this warg and that the two vadis referred to in the chitta as lying to the east of 'ಉರುವಮನೆ' are identical with S.No. 91/2. The extent of the two vadis has been given in the chitta as five 'koilus' or 50 cents; whereas S.No. 91/2 measures 1.19 acres. The 'Gujji' land and Adam Sheriff's house site are stated to be identical with the southern portion of S.No. 90. Here also the extent viz.. --- 25 koilus ($2\frac{1}{2}$ acres) of the 'Gujji' given in the chitta ----- differs from the recorded extent of S.No. 90 which measures 4.98 acres. Nobody knows who Adam Sheriff was, and where his house site is. There is no house site in S.No. 90. For the reasons stated above, I am of opinion that the chitta does not in any way substantiate the warg claim advanced by the ------ petitioners

6. Plot S.No. 91/6, which according to petitioners ---- formed part of their warg is Hosagame land. I traced the --

records (D.R.2/1307) of this assignment and find that the plot was assigned to Giriya Shetty, one of the suit notice -------- petitioners, as kumaki land. The sketch prepared in the said darkhast case shows that plot No.1 in the sketch which was --- assigned to Giriya Shetty is identical with S.No.91/6 and plot marked 3 which surrounded plot No.1, corresponds to ---------- S.No.91/2, 7. The latter plot has been described in the ---- sketch as kumki in the enjoyment of petitioner. Plot No.5 in the said sketch which corresponds to S.No.90 has been shown as the kumaki 'Hadi' of Krishna Padiyar, the former owner of the lands in the north, viz., S.Nos.74/15, 18 etc. The ---------- Tahsildar's order of assignment also shows that the plot ----- assigned to Giriya Shetty formed his kumaki and not his warg. The above said sketch and the Tahsildar's order conclusively show that the plots now claimed never formed part of ---------- petitioners' warg, and thus wholly disprove the warg claim set up by the petitioners.

7. One of the petitioners, Ummakke Shetty, had once --- before advanced warg claim to most of the plots now claimed, basing her claim on the chitta referred to above; but the ---- claim was rejected by the Collector in proceedings Dis.No.---- 3574 D/Rev.'14 dated 11-8-1914.

8. The plots forming the subject of this case have, I - hear, been selected by the Collector after a personal inspection for assignment to the houseless poor of Udipi.

9. The chitta referred to above the records of D.R.No. 2/1307 and other connected records are enclosed.

Form A. - Defence of Suits.

Dateof the plaint.	Date of service of the summons on the Collector.	Date of --- Collector's letter.	Date of hearing.	Explanation for delay --- where a clear fortnight - is not allowed to the --- Board for the consideration of the case.
17.11.1920.	27.11.1920.	29.1.1921.	18.2.1921.	

South Kanara Collector's Office,
Camp Ajekar, 29th January 1921.

P Mambran
1-2-21
For Collector.

Ces
1.2.21